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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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In The Matter of	)	
	)	
MCI Telecommunications Corporation	)	
	)	RM 9108
Billing and Collection Services Provided	)	
By Local Exchange Carriers For	)	
Non-Subscribed Interexchange Services	)	

REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI), by counsel, hereby files these reply comments in the above-captioned proceeding.[1] The overwhelming majority of parties, representing a broad-cross section of industry segments, enthusiastically support MCI's Petition For Rulemaking (Petition).[2] The only opponents, and predictably so, are entities whose conduct, in part, precipitated MCI's rulemaking request: incumbent local exchange companies (ILECs), including Regional Bell Operating Companies (RBOCs).[3]

In opposing MCI's Petition, the ILECs make a number of arguments that can only be described as self-serving and anti-competitive. For example, in the face of clear evidence that there is scant competition for the ILECs in providing billing and collection (B&C) services, and thus no market constraints on the terms that they

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[1]Public Notice, *MCI Telecommunications Corporation Files Petition For Rulemaking Regarding Local Exchange Company Requirements For Billing and Collection Of Non-Subscribed Services*, DA 97-1328, RM 9108 (rel. June 25, 1997).

[2]Comments in support of MCI's Petition were filed by Telco Communications Group, Inc., Sprint Communications Company L.P., Pilgrim Telephone, Inc., OAN Services, Inc., Integretel, Incorporated, Nevadacom, Hold Billing Services, LTD., Excel Communications, Inc., Digital Network Services, Inc., VarTec Telecom, Inc., WorldCom, Inc., Cable & Wireless, Inc., Interactive Services Association, Competitive Telecommunications Association, Consolidated Communications Telecom Services Inc., AT&T Corp., Telecommunications Resellers Association, Americatel Corporation, PhoneTime Inc., and Telco Communications Group.

[3]The only opponents of MCI's Petition are Ameritech, Cincinnati Bell Telephone Company, Bell Atlantic and NYNEX, SBC Communications Inc., BellSouth Corporation, U S West, Inc., and Southern New England Telephone Company.

can dictate to their interexchange carrier customers (IXCs), the ILECs argue that there is no need for a requirement that they act reasonably and in a non-discriminatory fashion.[4] Despite plain facts to the contrary, the ILECs also assert that they do not have bottleneck control over the market for B&C services for non-subscribed IXC services.[5] Moreover, the ILECs argue that their behavior is so constrained by a statutory non-discrimination mandate, that no agency amplification or implementation of that statute is necessary.[6] MCI will address the fallacies in each of these assertions below.

I. IMPLEMENTATION OF A RULE REQUIRING LECs TO PROVIDE B&C SERVICES FOR NON-SUBSCRIBED IXC SERVICES IS A PROPER EXERCISE OF THE COMMISSION'S TITLE I ANCILLARY JURISDICTION.

The Commission's authority to provide the relief sought by MCI is undisputed, and no party questions the Commission's Title I jurisdiction over B&C services. The Commission has held that its jurisdiction under the Communications Act should be construed "broadly and expansively."[7] There are several specific statutory provisions that would support a decision to exercise Title I jurisdiction in this case. The Commission has held that it can exercise jurisdiction over services not specifically within the scope of its Title II jurisdiction if to do so is "necessary to ensure the achievement of the Commission's statutory responsibilities."[8] The Commission has also recognized that it can exercise Title I jurisdiction in matters "reasonably ancillary to the effective

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[4] *See, e.g.*, Comments of Cincinnati Bell Telephone Company at 3 ("the decision by a LEC to offer [billing and collection] services to any [interexchange carrier] or any other party is a business decision by the [local exchange company]," and, if it so desires, a LEC can "simply decide[] to exit the business of providing billing and collection services."

[5] *See, e.g.*, Opposition of Ameritech at 1.

[6] *See, e.g.*, Comments of BellSouth Corporation at 2.

[7] *See* 47 U.S.C. § 2(a). *See also* Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, ¶ 9 (rel. Dec. 7, 1993) (citation omitted).

[8] Public Service Commission of Maryland v. FCC, 4 FCC Rcd 4000, 4005 (1989) (citation omitted).

performance" of its powers and responsibilities under Titles II and III of the Act.[9] The issue before the Commission is thus whether it should exercise its ancillary jurisdiction, and not whether it possess the authority do so in the first place.

Southern New England Telephone Company (SNET) argues that the Commission should not exercise its Title I jurisdiction because B&C is a "financial and administrative service."[10] Although the Commission's 1986 decision that B&C services were outside of its Title II jurisdiction[11] was based in part on a conclusion that B&C services are financial and administrative, the Commission has rejected arguments that it is without jurisdiction to regulate, and thus, preempt states from regulating B&C services.[12] The Commission has also stated that it can invoke its jurisdiction to regulate any charge or practice associated with a common carrier service to ensure that the carrier is operated in the public benefit.[13] Such circumstances are clearly presented by the circumstances surrounding LEC provision of B&C services for non-subscribed IXC services.

Since there is no legal impediment to the Commission's exercise of its ancillary jurisdiction, ILECs argue that Commission action is unnecessary here for two reasons. First, they state that the market for B&C for non-subscribed IXC services is competitive: since market forces will control the conditions under which ILECs offer B&C, the Commission need not require ILECs to provide the service in a non-discriminatory fashion.[14] Second,

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[9] CCIA v. FCC, 693 F.2d 198, 213 (*citing* United States v. Southwestern Cable Co., 392 U.S. 157, 172-730 (1968). *See* 47 U.S.C. § 4(j) (Commission may conduct proceedings in a manner that will "best conduce to the proper dispatch of business and to the ends of justice").

[10]Comments of SNET at 3.

[11]*See* Detariffing of B&C Services, 102 FCC 2d 1150, 1169 (1986) (Detariffing Order).

[12] *See* Maryland Public Service Comm'n v. FCC, 4 FCC Rcd 4000, 4005 (1989) (Commission can invoke Title I jurisdiction when necessary to ensure achievement of its statutory responsibilities, or to preempt state regulation that conflicts with, and would effectively undermine the achievement of, federal policies.

[13]Inside Wiring Decision, 1 FCC Rcd 1190, 1192-93 (1986).

[14]*See, e.g.*, Comments of Bell Atlantic and NYNEX at 3.

they argue that MCI's reliance on this ILEC-provided service is simply a routine business decision, and thus, the Commission should not require that B&C for non-subscribed services be provided on a non-discriminatory basis.[15] Neither argument is persuasive.

II. B&C SERVICES FOR NON-SUBSCRIBED IXC SERVICES ARE NOT COMPETITIVE.

In the 1986 Detariffing Order, in which the Commission declined to regulate B&C services for presubscribed IXC services pursuant to Title I of the Act, the Commission did not consider the question whether the B&C market for non-subscribed IXC services was competitive. Since it is that market alone that is the subject of MCI's Petition, the Commission's pronouncement a decade ago is clearly irrelevant. Yet, the parties opposing MCI's Petition blindly point to the Commission's Detariffing Order as evidence of the existence of competition in the non-subscribed B&C services market. Bell Atlantic and NYNEX, for example, state that LEC billing services are "fully competitive,"[16] yet they cite no evidence of any viable realistic alternatives to their own non-subscribed B&C services. The reason for the absence of that assertion is clear: there are none.

Several commenting parties agree that the Commission's expected competition in the area of B&C services for presubscribed IXC services has simply not evolved. The Competitive Telecommunications Association (CompTel), for example, points out that it was not until 1996, a full decade after the Detariffing Order, that AT&T, specifically referenced in the Detariffing Order as a carrier that "had already begun taking over billing" for its own presubscribed customers,[17] actually introduced direct remit billing for presubscribed

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[15] *See, e.g.*, Opposition of Ameritech at 2; Comments of SNET at 3.

[16] Bell Atlantic and NYNEX Comments at 1-2.

[17] Comments of CompTel at 4. *See* Detariffing Order at 1157-58, 1170, n. 50. CompTel notes that a Court noted that the basis for the assertion that B&C services were competitive was "sparse." *See* CNS v. FCC, 3 F.3d 1526, 1531 (1993). Comments submitted in the Detariffing Order proceeding forecast the questionable nature of the determination that competition for B&C for presubscribed IXC services would constrain ILEC abuse of market power. The Detariffing Order noted NTCA's and OPATSCO's comments questioning whether significant competition would develop, or whether a *de facto* oligopoly would arise. Detariffing Order at 1157-58. The Commission also highlighted GTE's cautionary comment that the Commission should refrain from pursuing a policy that encouraged competition for competition's sake. *Id.* at 1158.

services. Even so, the question whether the market for B&C for **presubscribed** IXC services is competitive is not relevant here. Rather, the issue here is whether competition exists in the market for B&C for **non-subscribed** IXC services.

As an example of the non-existence of competition in the relevant market, in a recent month, approximately 74% of the non-subscribed services calls carried by MCI were billed by the seven RBOCs. Only approximately 6% were billed by clearinghouses, and the balance of approximately 20% were billed by independent telephone companies. The RBOCs nevertheless argue that a market is "fully competitive" when they provide almost 75% of the services in that market, with other ILECs accounting for most of the difference.[18] Provision of at least 75% of the B&C services available to the providers of non-subscribed IXC services demonstrates that, notwithstanding ILEC protestations to the contrary, they do indeed have the ability to seriously distort and control the B&C market for non-subscribed IXC services.

Like Bell Atlantic and NYNEX, U S West also asserts that IXCs have been free to utilize other providers for non-subscribed B&C services. U S West specifically argues that MCI's Petition should be denied because MCI has chosen not to examine clearinghouses as a viable alternative to LEC-provided B&C services.[19] Clearinghouses, however, do not provide a competitive alternative for the vast majority of presubscribed IXC

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[18]In the antitrust context, courts continue to regard market share as the starting point in assessing whether competitive alternatives exist to a form in that particular market. *See, e.g.,* U.S. Anchor Mfg. v. Rule Indus., Inc., 7 F.3d 986, 999 (11th Cir. 1993), *cert. denied,* 114 S. Ct. 2710 (1994) ("principal measure of actual monopoly power is market share"); Fineman v. Armstrong World Indus., Inc., 980 F.2d 171, 201 (3d Cir. 1992) (citations omitted) ("[a] predominant share of the market, . . . may suffice to show market power.") Provision of at least 75% of the services in a market is a strong indicator of market power. *See, e.g.,* Heatransfer Corp. V. Volkswagenwerk, A.G., 553 F.2d 964, 981 (5th Cir. 1977) (71% to 76% market share sufficient to infer market power); Illinois ex rel. Hartigan v. Panhandle E. Pipe Line Co., 730 F. Supp. 826, 902 (C.D. Ill 1990), *aff'd sub nom* Illinois ex rel. Burris v. Panhandle E. Pipe Line Co., 935 F.2d. 1469 (7th Cir. 1991, *cert. denied,* 502 U.S. 1094 (1992) (for market shares above 70%, courts infer market power without even examining existence of ability to control prices).

[19]Comments of U S West at 12. *See also* Comments of Ameritech at 3-4 (asserting that "the development of alternative billing arrangements has always been a business option for MCI," and that MCI seeks the Commission's assistance to "'protect its margin").

services, not to mention non-subscribed IXC services which were not considered in the Detariffing Order of a decade ago. Moreover, the utility of clearinghouses virtually disappears in the area of B&C for non-subscribed IXC services used by customers of RBOCs and large ILECs.

As noted in MCI's Petition, the complexities associated with large scale usage of clearinghouses for B&C for non-subscribed IXC services cannot be underestimated.[20] In order for a clearinghouse arrangement to work at all, the clearinghouse must have an agreement with the LEC, pursuant to which the LEC provides the clearinghouse with information sufficient to match LEC records with the IXC call detail.[21] Therefore, clearinghouses can only begin to be effective for non-subscribed services when the affected LEC has a contractual arrangement with the clearinghouse. As Hold Billing Services, LTD, a clearinghouse, comments, however, "[t]he ILECs have recently capitalized upon [their] bottleneck control over information to adopt a 'take it or leave it' negotiating stance, thereby forcing clearinghouses to accept terms that otherwise would be unacceptable."[22]

The argument that MCI is simply seeking a regulatory escape from the consequences of its own business

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[20]MCI Petition at 9.

[21] The clearinghouse would also have a contract with the IXC, pursuant to which the IXC would provide the clearinghouse with the call records against which the clearinghouse would match the customer records. The clearinghouse, pursuant to its contract with the LEC, would then provide the LEC with the information needed to bill the customer for the non-subscribed service in the LEC's local exchange services invoice. Several smaller independent LECs have contracts with clearhinghouses described herein. Within the territory of an RBOC or major ILEC, however, which covers most of the non-subscribed IXC traffic, because that RBOC or ILEC does not have a contract with a clearinghouse, no clearinghouse would not have the information necessary to match the vast majority of IXC non-subscribed call records with the appropriate customers.

[22]Comments of Hold Billing Services, LTD, at 4. One commenting party underscores the reliance of the non-subscribed services industry on the services provided by clearinghouses when it states that other than clearinghouses, it knows of no third party vendor which could provide the B&C services it requires. Comments of Digital Network Services, Inc., at 7.

decisions to utilize ILEC-provided B&C for non-subscribed services evades the issue of ILEC dominance over B&C, and the resulting detrimental effect on the public interest now that this market power is being abused. As explained in MCI's petition, MCI relies on ILEC-provided B&C for non-subscribed services because there are no viable alternatives. While this may be a business decision, it is one that is necessitated by the lack of competition in the market, and not by MCI's attraction to the choice offered by the ILEC: ILEC termination of B&C arrangements or anti-competitive terms offered on a "take it or leave it" basis. The unfair impact of the abuse of ILEC market power over B&C for non-subscribed services is crystal clear. The non-discrimination rule proposed by MCI is minimally intrusive and specifically tailored to curb this abuse.

III. MCI IS NOT SEEKING TO ADDRESS DISPUTES WITH SPECIFIC CARRIERS AS PART OF THIS RULEMAKING PROCEEDING.

The ILECs generally assert that MCI's Petition is an attempt to address disputes it has with individual carriers, without having to resort to the Commission's or the courts' formal litigation measures.[23] Comments filed by other parties in this proceeding belie that allegation, and clearly demonstrate that MCI's Petition is fueled by more than just an individual dispute between MCI and one or two ILECs. For example, AT&T points out that it has been told by a major ILEC that unless AT&T commits to B&C by the ILEC of at least 85% of AT&T's interexchange traffic, the ILEC will nearly double its B&C price by the end of 1997.[24] Additionally, WorldCom, Inc. (WorldCom), reports that it has received a letter from a major ILEC that purports to unilaterally cancel a current B&C agreement and impose onerous new terms and conditions on WorldCom.[25] Sprint Communications Company L.P. (Sprint)similarly comments that it has been told by a major

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[23] *See, e.g.,* Comments of Bell Atlantic and NYNEX at 2.

[24] Comments of AT&T at 3.

[25] Comments of WorldCom at 4.

ILEC that unless it agrees "to accept the significantly higher rates and onerous terms the ILEC proposes, the [B&C] agreement [will] be terminated."[26]

The ILECs' ability to abuse providers of non-subscribed IXC services was made painfully and publicly apparent at a Local Exchange Company Billing Forum sponsored by the Commission on June 24, 1997. At the forum, a GTE representative announced the implementation of an "excessive complaint surcharge," to be lodged against an IXC, at GTE's discretion, when GTE receives what it determines to be an "excessive" number of customer inquiries or complaints about IXC services for which GTE provides B&C services. GTE announced that its new stance includes plans to terminate, without question, agreements with all parties that do not agree to the onerous surcharge.[27]

The Commission stated in the Detariffing Order that:

> [d]eregulating billing and collection will serve the interests of the LECs by giving them greater flexibility in structuring and pricing this service, thereby enhancing their ability to retain and attract customers. It will serve the interests of their customers,

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[26]Comments of Sprint at 3-4. Many other companies also comment that they have recently been presented with negotiation tactics that can only be described as leaving no realistic room for negotiation. *See, e.g.,* Comments of Pilgrim Telephone, Inc., In Support of Petition For Rulemaking at 4 ("Pilgrim has encountered take-it-or-leave LEC [B&C] 'negotiation' tactics" . . .); Comments of Frontier Corporation at 2 (ILEC insists on a "complaint reduction program" where, after threshold is met, ILEC will charge $1,000 for each customer complaint or inquiry); Comments of Hold Billing Services, LTD at 4 (ILECs are forcing clearinghouses to accept terms that otherwise would be unacceptable to them). The factual inaccuracy of the assertion that MCI's Petition is prompted by a dispute with an individual carrier is also revealed by the existence of a filing earlier this year by America's Carrier's Telecommunications Association (ACTA), wherein ACTA also indicated that ILECs have announced plans to cease providing IXCs with customer billing information required for 10XXX calls. Thus, it is clear that MCI is not asking the Commission to initiate a rulemaking proceeding to address mere contractual differences between two parties. Rather, MCI seeks the Commission's rulemaking powers to curb the ILECs' abusive and anti-competitive exercise of market power.

[27]Because the ILECs have demonstrated that they intend to continue to abuse their market power in the B&C market overall, many supporters of MCI's Petition urge the Commission to expand MCI's Petition to include B&C for presubscribed services as well. *See, e.g.,* Comments of Excel Communications, Inc., at 1; Comments of Hold Billing Services, LTD, at 9; Comments of Consolidated Communications at 4, n.1.

> the [IXCs], by enabling them to get billing and collection packages tailored to their specific needs at rates that are more directly based on the LEC's costs. Finally, deregulation will serve the interests of subscribers by holding down the carriers' administrative costs of providing telephone service.

Detariffing Order, 102 FCC 2d at 1169. The ILECs' behavior clearly demonstrates that they have converted the flexibility contemplated by the Commission into conduct which can only be characterized as abusive, anti-competitive, onerous and unfair. Moreover, the Commission's hopes about the future existence of competition notwithstanding, MCI and other commenting parties remain unable to obtain B&C tailored to specific needs, or at rates that are even remotely based on ILEC costs. Last, but not least, if allowed to continue unrestrained, the ILECs tactics will certainly result in quantifiable public injury, since the burden of the increase in IXCs' administrative costs will have to be passed along to consumers in the form of higher prices for presubscribed and non-subscribed interexchange services alike.

The ILECs also point to the fact that billing name and address (BNA) information is available to IXCs so that they can bill and collect for their own services.[28] Those ILECs fail to point out, however, that the Commission has specifically stated that "the BNA tariffing requirement is limited to BNA information associated with calling card, third party, and collection calls, ..."[29] MCI estimates that $1.5billion in 10XXX traffic was carried in 1996 by carriers **other than** MCI, AT&T and Sprint. Thus, requirements to provide BNA for non-subscribed services other than 10XXX jeopardizes a huge portion of the non-subscribed services market.[30]

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[28]*See* Opposition of Ameritech at 3; Comments of SNET at 3; Opposition of SBC Communications, Inc., at 11-12.

[29]Third Order on Reconsideration, Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, ¶ 39 (rel. Feb. 9. 1993).

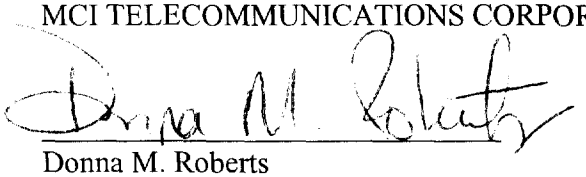
[30]Many ILECs gloss over the importance of non-subscribed services such as 10XXX. Ameritech, for example, comments that "use of 10XXX calling to bypass a presubscribed [IXC's] downed network is not well-enough known to constitute a legitimate network reliability mechanism". Opposition of Ameritech at 4. *See* Opposition of U S West at 4, n.18 (the "goodness or value" of non-subscribed services is not material to MCI's request for relief).

The ILECs' final argument in opposition to MCI's Petition is that MCI is disingenuous in seeking a non-discrimination standard that is temporary in nature.[31] MCI is aware that some parties hint that a non-discrimination rule should be implemented on a permanent basis.[32] MCI's Petition, however, clearly requests a temporary rule, which would last only until such time as viable competitive alternatives to ILECs exists in the market for B&C for non-subscribed IXC services.

WHEREFORE, for the foregoing reasons, MCI respectfully requests that the Commission expeditiously grant its Petition and initiate a proceeding to create rules governing the provision by local exchange carriers of B&C services to providers of non-subscribed IXC services.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION



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[31] *See, e.g.,* Opposition of U S West at 5-6.

[32] *See, e.g.,* Comments of the Telecommunications Resellers Association at 7 (expressing doubt that a transitional measure will protect the interests of small carriers).

CERTIFICATE OF SERVICE

I, John E. Ferguson III, do hereby certify that copies of the foregoing Reply Comments of MCI on Billing and Collection Services Provided By Local Exchange Carriers For Non-Subscribed Interexchange Services were sent, on this 14th day of August, 1997, via first-class Mail, postage pre-paid, to the following:

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